

REMARKS

Reconsideration of claims 1, 3, 6, 10, 12, 15, 19, 24-27 and 30-34 is respectfully requested. Claim 1 is amended and now includes language of canceled claims 7 and 28. Claim 10 is amended and now includes language of canceled claims 17 and 29. Claims 7, 17 and 26-29 are canceled by this Amendment.

The rejection of claims 1, 3, 10, 12, 19, 24, 25 and 28-32 under 35 USC 102(e) as anticipated by Chowhan (US 6,365,636) is respectfully traversed with respect to the amended claims. Applicants submit that there is no description of a composition with both the low and high HLB poloxamine or poloxamer surfactants. Accordingly, applicants respectfully request that the rejection be withdrawn.

The rejection of claims 1, 3, 6, 7, 10, 12, 15, 17, 19 and 24-34 under 35 USC 103(a) as unpatentable over Winterton (EP 0 439 429A2) in view of Vehige (US 5,858,346) and Ogunbiyi (US 4,758,595) is respectfully traversed with respect to the amended claims.

Winterton describes a contact lens solution with a poloxamine surfactant having an HLB value of seven or less, and a poloxamer surfactant having an HLB value of seven or less. See, Abstract, page 7, line 29 to page 8, line 13, claims 2, 12 and 13. Winterton also suggests that to prevent agglomeration of oils (common among patients who wear eye makeup) a surfactant with an HLB greater than seven may also be added. Page 5, lines 12-14, and Example 1. Nevertheless, the focus of Winterton is on the use of both a poloxamine and a poloxamer with HLB values of seven or less. Also, Winterton only teaches and suggests that such a surfactant combination would work well with a peroxide, i.e., an oxidizing, disinfecting system. There is no teaching or suggestion in Winterton of using a disinfecting system based on PHMB or polyquat, or one of the now claimed wetting agents, as acknowledged in the Final Official Action (page 4, 4th paragraph).

To overcome the deficiency in Winterton the Examiner cites Vehige, which like a hundred other references in this art, teach the use of PHMB or polyquat to disinfect a contact lens. The focus in Vehige is to use a two-step process to disinfect a contact lens. The first step is a disinfecting step using PHMB or polyquat. The second step is a rinse

deactivation step in which an anionic cellulose or anionic polymer is used to deactivate the cationic disinfectant.

Applicants submit there is no relationship suggested in Vehige to use PHMB or polyquad with the surfactant combination described in Winterton. It appears the Examiner is arguing that it would be obvious to one of ordinary skill in the art to substitute the cationic PHMB/polyquad disinfectants for the peroxide disinfectant of Winterton. Applicants respectfully disagree.

Applicants submit that it would not be obvious to one of ordinary skill to make the proposed substitution of disinfecting agents for the simple reason that one of ordinary skill would not reasonably expect a contact lens solution with a peroxide disinfectant to have similar cleaning and disinfecting properties as a lens solution with a cationic disinfectant with all the other solution components being the same. The chemistry of the disinfecting systems is completely different, that is, one is a strong oxidizing system and the other is not.

The Examiner has apparently looked to the art of contact lens solutions, identified each of the claimed recitations and then combined each of the individual reference teachings to reconstruct Applicants claimed compositions. Applicants submit that it is improper for the Examiner to reconstruct the claims without a hint of suggestion or motivation in the art to combine those teachings as taught by the Applicants own patent application. This reconstruction is improper even though each of the recited surfactants and disinfectant agents are known components of contact lens solutions. As stated recently by the Court in *KSR International Co. v. Teleflex Inc.*, ___ U.S. ___ (April 30, 2006)

“a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was independently known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices [elements] according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

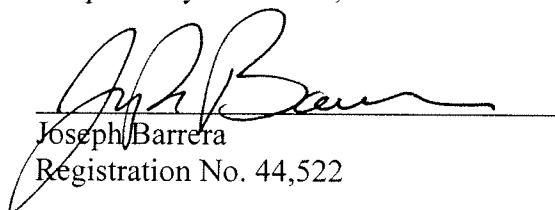
[Although, t]he obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion and motivation ... [(TSM), t]here is no necessary inconsistency between the idea underlying the TSM test and the *Graham* analysis.”

For the reason stated, Applicants respectfully request that the rejections be withdrawn.

Applicants submit the requisite fee with the Request for Continued Examination. Please charge any additional fee or credit overpayment to Deposit Account No. 02-1425.

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Respectfully submitted,


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